IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

WEDNESDAY, THE 23RD MAY 2007 / 2ND JYAISHTA 1929

MFA.No. 1318 of 2002(B)

OPMV.188/1998 of MOTOR ACCIDENT CLAIMS TRIBUNAL, TIRUR
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APPELLANT:

UNITED INDIA INSURANCE CO.LTD.,
THAZEPALAM, TIRUR.

BY ADV. SMT.P.K.SANTHAMMA

RESPONDENTS:
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1. PRADEEPKUMAR, SREE VISWAMBARA NIVAS,
THOKKAMPARA, KOTTAKKAL P.O., TIRUR TALUK.

2. P. MURALEEDHARAN, PALATHINGAL HOUSE,
P.O. EDARIKODE, MALAPPURAM DISTRICT.

3. RAVI KUNDATHPADI, NEAR MOOKKUTHALA
HIGH SCHOOL, P.O. MOOKKUTHALA,
PONANI TALUK.

BY ADV. SRI.P.CHANDRASEKHAR FOR R1

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 23/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

M.F.A.NO.1318 OF 2002 (B)

Dated this the 23rd day of May, 2007

J U D G M E N T

KOSHY,J.

This appeal is filed by the Insurance company against the award of the Motor Accident Claims Tribunal. Two contentions were raised. First contention is that there is no negligence on the part of the driver of the jeep insured by it. Secondly it was contented that quantum of compensation was high.

2. A 29 year old young man employed as a gate keeper and advertisement boy in a cinema theatre suffered serious injuries in a motor accident. According to him he was travelling in a passenger jeep bearing Registration No.KLL 4119 from Parambilangadi to Randathani driven by the 2nd respondent in a rash and negligent manner. When it reached the place called Palathara, petitioner wanted to get down and driver of the jeep stopped the vehicle and when he was getting down, the driver

drove the jeep in a reckless manner and the petitioner fell down from the jeep and sustained grievous injuries. The jeep was insured by the 3rd respondent Insurance Company. Considering Ext.A1 F.I.R, Ext.A2 Scene mahazar, Ext.A4 report of the Sub Inspector of the Police etc. Tribunal found that accident occurred due to the negligence of the driver of the vehicle. No oral evidence was adduced. The case of the appellant Insurance company was that First Information statement was given by the brother of the injured and that was not accepted by the criminal court and was acquitted. Further it is submitted by the appellant that the injured has jumped from the jeep. However no evidence was adduced by the appellant to prove such allegation. Merely because criminal case ended with the acquittal of the driver, it cannot be stated that driver of the vehicle was not negligent. Considering the police report, F.I.R. and other documentary evidence, Tribunal found that accident occurred due to the negligence of the driver of the vehicle insured by the appellant Insurance company. We see no ground to interfere in the finding.

3. Only Rs.1,500/- was taken as the monthly income and since the injured was aged 29, considering the Second

schedule tribunal has fixed 18 as the multiplier. With regard to the injuries, Doctor certified that there is 45% disability. Tribunal has considered the matter in detail at paragraph 8 of the award which is as follows:

> "Ext.A5 is the wound certificate. The petitioner was deeply un-conscious when the doctor examined. The history was given by Sudhakaran the elder brother of the petitioner. The petitioner sustained the following injuries.
>
> 1) Contusion abrasion 2 x 2 cm. on right frontal region.
> 2) Contused abrasion 2 x 2 cm.
> 3) Lacerated wound 2 x ½ x ½ cm. on face.
> 4) Abrasions 5 x 2 cm. on right knee joint.
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> Ext.A6 is the treatment certificate issued from the Medical College Hospital, Kozhikode. He was admitted on 18.2.1996 and discharged on 26.3.1996. He was treated as inpatient for 35 days. Ext.A7 is patient's name index card. Ext.A8 is referal O.P.Ticket. Ext.A9 is the disability certificate issued by the doctor. It is stated in the certificate that on admission he was deeply unconscious with bilateral constricted pupils with multiple abrasions on scalp face and right knee. CT scan head showed contusion of (Lt) pareital lobe. He was treated by SV and Neurosurgeon as a case of diffuse axonal injury. Meanwhile he developed a large bed sore on the sacral region. On discharge he was partially ambulant and advised to attend physical Medicine Department for physiotherapy. He is having dysarthria, ataxia and limping of the right leg. The total disability is assessed at 45%.

No challenge was made to the above certificate and no petition was filed by the appellant Insurance company for the examination of the injured by the Medical Board disputing the disability certificate. Thus total compensation awarded was Rs.1,94,800/-. The medical certificate shows that very serious injuries were suffered by the claimant. He was inpatient for 35 days in the hospital and thereafter also he had to get treatment in the hospital and physiotherapy was also needed. Considering the injuries sustained by the claimant and the award granted, we are of the view that no interference is required in the award passed by the Tribunal and hence this appeal is dismissed.

J.B.KOSHY, JUDGE

K.P.BALACHANDRAN, JUDGE

prp

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

M.F.A.NO.1318 OF 2002 (B)

J U D G M E N T

23rd May, 2007